

Internal Revenue Service

memorandum

CC:TL-N-9621-87

Br2:JMPanitch

date: FEB 22 1988

to: District Counsel, Hartford
Attn: Andrew R Ceccherini

CC:HAR

from: Director, Tax Litigation Division

CC:TL

subject: [REDACTED] [REDACTED]

By memorandum dated February 2, 1988, you requested us to reconsider our September 23, 1987 response to your July 24, 1987 request for technical advice. You stated that you had outlined Service position to petitioners and had requested them to brief their argument in response. You attached a copy of petitioners' brief to your request for our reconsideration. We have read petitioners' brief, and we have two comments:

1. Nowhere in their brief do petitioners discuss Commissioner v. Chase National Bank of the City of New York, 122 F.2d 540 (2d Cir. 1941), aff'g, 41 B.T.A. 430 (1940), acq., 1945 C.B. 2, Commissioner v. North American Bond Trust, 122 F.2d 545 (2d Cir. 1941), rev'g, No. 95591 (B.T.A. April 25, 1940), cert. denied, 314 U.S. 701 (1941), and Julian Well No. 1 Syndicate v. Commissioner, T.C.M. 1944-388. The trust instrument in all three of these cases divided authority between a depositor or operator and a trustee, with the trustee receiving nominal powers and the depositor or operator receiving powers to operate the trusts. In North American Bond Trust and Julian Well No. 1 Syndicate, the trusts were held to be taxable as associations despite the trustees' nominal powers. In Chase National Bank of the City of New York, the trust was held to be taxable as a trust where neither the trustee nor the depositor had more than nominal powers over the trust res. The [REDACTED] agreement clearly contemplates the operation of a commercial venture and empowers the operator to attain this objective. Thus, petitioners' theory promoting the view of [REDACTED] as a true trust appears to be contradicted by the available legal precedent.

2. Even ignoring the role of the trustee of [REDACTED], the business organization formed by petitioners through their agreement would be taxable as an association. The organization has associates, an objective to carry on

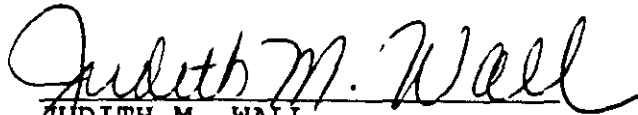
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business and divide the gains therefrom, continuity of life, centralization of management, and free transferability of interests. Petitioners' discussion of two of these points (continuity of life and free transferability of interests) is inconclusive. Petitioners' discussion of a third element (centralization of management) appears to be fatally misguided. No portion of the petitioners' discussion of these three elements can remotely be construed as either responding to or refuting the rationale and conclusions which we reached in our earlier analysis. Therefore, we remain unpersuaded on these points.

For the foregoing reasons, our original conclusion remains unaltered.

MARLENE GROSS

By:



JUDITH M. WALL

Senior Technician Reviewer

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